



Water Law News for October 20, 2011
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WATER LAW NEWS OCTOBER 20, 2011

BNA, Inc.

Daily Environment

REPORT

HIGHLIGHTS

Climate Change

EPA's Jackson Says Emissions Rules Will Help Private Investors Seeking Clarity

Regulation of greenhouse gas emissions will help private investors who want a more predictable regulatory landscape before investing in clean energy technologies, the head of the Environmental Protection Agency said Oct. 19....

Climate Change

Wealthy Nations' Emissions Fell 6.5 Percent In 2009; Poorer Countries Rose 3.3 Percent

ROME—Carbon dioxide emissions from developed countries declined 6.5 percent in 2009 compared to the previous year, while emissions from developing countries rose 3.3 percent, the International Energy Agency said in an advance report...

Drinking Water

Water Group to Hold Webcast on Water Software

The American Water Works Association and a software developer, Bentley Systems Inc., plan to hold a webcast Oct. 25 to present and discuss a software tool known as WaterGEMS' Criticality. The webcast, which will begin at 1 p.m., will discuss...

Mining

Alaska Borough Approves Initiative Targeting Mining Activities That Harm Salmon Habitat

ANCHORAGE, Alaska—Voters in the Lake and Peninsula Borough in southwest Alaska approved a ballot initiative that, if upheld in court, could prohibit local permits for the Pebble Mine, a huge open-pit copper and gold project proposed...

Oceans

California Court Dismisses Challenge By Anglers to Marine Protected Areas

LOS ANGELES—A California court Oct. 17 denied a request by anglers to block the establishment of marine protected areas by the California Fish and Game Commission on the state's southern and central coasts (United Anglers of Southern...

Water Pollution

New York City Reaches Consent Agreement With State on Combined Sewer Overflows

ALBANY, N.Y.—New York City will spend \$187 million on green infrastructure projects over the next four years to reduce combined sewer overflows into its waterways under a modified consent order with the New York State Department of...



Inside EPA Weekly Report, 10/21/11
<http://insideepa.com/Inside-EPA/Inside-EPA-10/21/2011/menu-id-67.html>

Landmark EPA Mine Veto May Hinge On Impact Of Permit Review Vacatur

The fate of a federal district court lawsuit over EPA's first-time veto of a previously issued Clean Water Act (CWA) mountaintop mining permit could hinge on how the agency responds to the judge's question on whether the court's recent vacatur of EPA's "enhanced" procedures for reviewing mine discharge permits undermines the veto.

EPA Weighs Revisions For Granting 'Aquifer Exemptions' For UIC Wells

EPA is weighing revisions to its policy for determining whether to exempt aquifers that are deemed unfit sources of drinking water from protection under its underground injection control (UIC) program, a move that could have far-reaching implications across a host of operations, including those for mining, drilling, waste disposal and carbon capture.

EPA's Long-Awaited TCE Risk Study May Have Uneven Regulatory Impact

EPA's new risk assessment for the industrial solvent trichloroethylene (TCE) may have little effect on the agency's drinking water maximum contaminant level (MCL) for the chemical, but questions linger over whether the risk assessment will result in changes to how the agency assesses vapor risks from underground sources that require cleanup, industry and activist sources say.

California Unveils Final 'Vapor Intrusion' Guidance For Cleanup Sites

California's Department of Toxic Substances Control (DTSC) Oct. 12 released a long-awaited final guidance detailing how developers and site cleanup contractors should assess and mitigate so-called "vapor intrusion," a document that one source says may be the strictest and most comprehensive state policy to address the issue.

Latest Blogs

OMB Receives Pesticide Spray Permit

EPA has sent its controversial final Clean Water Act permit governing pesticide spraying operations to the White House Office of Management & Budget (OMB) for . .



ENERGY POLICY: GOP governors join anti-regulation chorus

Katie Howell, E&E reporter Published: Thursday, October 20, 2011

A group of Republican governors is urging President Obama to tone down new regulations on the energy sector and boost development of domestic energy resources.

"Obama's energy policy is one of scarcity and high cost and is the exact opposite of the right energy policy," Mississippi Gov. Haley Barbour said in a statement. "The best policy for creating jobs and economic growth is more energy."

Barbour and 16 other GOP governors urged Obama in a **letter** yesterday to include states in discussions of new air quality regulations and potential hydraulic fracturing regulations at U.S. EPA and in discussions about expanding federal jurisdiction over U.S. waters.

"Our states are effectively dealing with the environmental impacts of energy development and therefore, must become full partners in developing regulatory strategies," the letter says.

The governors have fired off a number of energy-related letters to Obama recently, including one earlier this month that blasted the administration's plans to impose new air pollution rules for coal-fired power plants.

"The fragile nature of the economic recovery should remain at the forefront of every decision by federal policy makers. Energy operations in the our states not only provide the country with domestic energy, but these industries constitute a significant base of employment and royalties which fund our schools, police and other vital state and local services," yesterday's letter says. "Protecting these important economic resources, while protecting health and the environment, is our common goal."

The letter is signed by Barbour, Wyoming Gov. Matthew Mead, Alabama Gov. Robert Bentley, Iowa Gov. Terry Branstad, Alaska Gov. Sean Parnell, Kansas Gov. Sam Brownback, Arizona Gov. Janice Brewer, Louisiana Gov. Bobby Jindal, South Carolina Gov. Nikki Haley, North Dakota Gov. Jack Dalrymple, South Dakota Gov. Dennis Daugaard, Ohio Gov. John Kasich, Utah Gov. Gary Herbert, Oklahoma Gov. Mary Fallin, Virginia Gov. Robert McDonnell, Pennsylvania Gov. Tom Corbett and Wisconsin Gov. Scott Walker.

[Click here](#) to read the letter.

OIL AND GAS: Democratic split over Keystone XL deepens

Elana Schor, E&E reporter Published: Wednesday, October 19, 2011

Democratic division over a controversial Canada-to-U.S. oil pipeline today grew deeper, as 22 House members from President Obama's party urged him to OK the project while one of its critics in the Senate Democratic caucus prepared to meet with State Department officials on multiple questions surrounding the pipeline.

The contrast between the House-side letter, signed by several lawmakers whose seats could be in jeopardy in 2012, and the concerns raised by more liberal Democratic caucus members such as Sen. Bernie Sanders (I-Vt.) underscores the dilemma facing Obama as his administration enters the last lap of review for the Keystone XL pipeline. Approving the \$7 billion project would infuriate greens and could depress election-year turnout by liberal voters but rejecting a permit for the XL link risks hurting U.S.-Canada relations and alienating potential allies in the GOP and the business world.

In their letter of support, the 22 House Democrats cited job-creation projections from the pipeline -- which would carry upward of 800,000 daily barrels of emissions-intensive Canadian oil-sands crude to Gulf Coast refineries, if approved -- that were generated by a consultant for Keystone XL's sponsor, Alberta-based TransCanada Corp.

"With job growth an ongoing struggle for our country, the proposed Keystone XL pipeline represents a true shovel-ready project that would directly create 20,000 high-quality domestic manufacturing and construction jobs for Americans who are desperately seeking employment," wrote the House Democrats, led by Rep. Gene Green of Texas.

Green, who represents the Houston area, is a reliable ally of the oil and gas industry and is not considered politically vulnerable next year. But several targeted Democrats did sign it, including Reps. Jason Altmire and Mark Critz of Pennsylvania, John Barrow of Georgia, Leonard Boswell of Iowa, Jim Costa of California, Jim Matheson of Utah, Bill Owens of New York and Collin Peterson of Minnesota.

Environmentalists opposed to the project have blasted the jobs estimates cited in the Democrats' letter as inflated by industry to bolster its case for the 1,700-mile XL link, a major priority for refiners as well as pipeline operators seeking to harness Canada's ample supply of oil sands fuel. The battle over job creation came to a head at a public meeting earlier this month hosted by State, where an

assessment of the pipeline's broader effects is now under way following the August release of an environmental review (*Greenwire* , Oct. 7).

That environmental review, and some of State's public meetings on the pipeline, was conducted with the aid of a contractor chosen following input by TransCanada, lending new momentum to conservation groups' charges of a conflict of interest at the department (*Greenwire* , Oct. 10). Sanders led a letter echoing those partiality concerns, sent Friday and co-signed by Sens. Patrick Leahy (D-Vt.) and Ron Wyden (D-Ore.), but his sitdown today with State officials touched on issues beyond the TransCanada-linked contractor.

Sanders' meeting today with Kerri-Ann Jones, assistant secretary of State for oceans, environment and science, focused on the conflict-of-interest questions raised in last week's letter as well as other, broader concerns about the safety and environmental impact of the pipeline, according to his office.

[Click here](#) to read the House Democrats' letter.

OIL AND GAS:

TransCanada offers concessions to Neb. lawmakers on Keystone XL

Published: Wednesday, October 19, 2011

TransCanada Corp. has offered a \$100 million performance bond and other oil spill protection measures to Nebraska lawmakers in an attempt to appease opposition to the company's proposed \$7 billion Keystone XL pipeline.

State lawmakers want to move the line away from Nebraska's Sandhills region, which is underlain by the Ogallala Aquifer, the source of most of the water for the U.S. agriculture region.

TransCanada executive Alex Pourbaix said it is too late to change the pipeline's path, although he said the Canadian company will offer other environmental protections, including a \$100 million bond that the company would make available to the state in the event of a spill in the Sandhills region.

"I believe [the measures] should help alleviate any remaining concerns about the safety of the approved route of the pipeline," Pourbaix wrote in the letter to the speaker, Sen. Mike Flood.

TransCanada spokesman Shawn Howard said the company has not yet received a response from the Legislature. The company decided to offer the concessions in light of a meeting with lawmakers last week, he said.

TransCanada has said the pipeline will be the most advanced and safest ever built. Supporters of the pipeline say it would provide the nation with cheap fuel, while opponents say it would present environmental hazards.

The U.S. State Department has said it will make a final decision on Keystone by the end of the year (Jeffrey Jones, *Reuters*, Oct. 18). -- **PK**

WATER:

EPA approves nation's strictest toxic pollution standards

Published: Wednesday, October 19, 2011

U.S. EPA has approved the nation's strictest state standards for toxic water pollution in Oregon, designed to protect residents who consume a large amount of fish.

The proposed standards are based on a diet that includes 175 grams of fish a day, up from the 17.5 grams that Oregon's current standards assume is the case. The 17.5 grams is also typical of most other states.

About 100,000 Oregonians, many of whom are tribal members, consume a lot of local fish each day. By raising the consumption level, the proposed standards make Oregon's health criteria for pollutants such as mercury, flame retardants, dioxins and pesticides much higher.

Waivers will be available for industries such as paper mills and municipal sewage treatment plants that say they cannot afford the new costs associated with the standards, according to the state Department of Environmental Quality. EPA said it would review each waiver request, and those getting variances will have to submit a plan to reduce pollution.

Although the standards take effect right away, they will only apply to renewals of water pollution permits. EPA said it understood that changes won't happen immediately: "The EPA understands that the implementation of these standards is on a long-term path," wrote Michael Bussell, director of the EPA's Office of Water and Watersheds in Seattle (Scott Learn, *Portland Oregonian* , Oct. 18). -- **AP**

WATER POLLUTION:

Regulators propose 'green infrastructure' fix for NYC sewer overflows

Colin Sullivan, E&E reporter Published: Wednesday, October 19, 2011

NEW YORK -- Empire State and city regulators today pitched a solution for stemming sewage overflows into New York Harbor.

Acting jointly, the New York State Department of Environmental Conservation and the New York City Department of Environmental Protection released a draft proposal that aims to address the more than 27 billion gallons of raw sewage and polluted stormwater that ends up the harbor each year.

The proposal follows a summer of bad local press for the city's waterways after a fire at a Harlem wastewater plant saw more than 260 million gallons of untreated sewage dumped into the Hudson River when the facility's pumps went down.

In the wake of that accident, regulators have insisted the harbor is cleaner than it has been in generations, but a public outcry for better communication from the city about combined sewer overflows, or CSOs, led to the proposed new rules, which are still subject to public comment.

The plan calls for improving harbor water quality by injecting cash into "green infrastructure" projects. In all, the regulators would spend \$2.4 billion in public and private dollars over the next 20 years on such projects in an attempt to capture stormwater before it enters the city's sewage system.

A memo explaining the proposal noted that the city is still largely serviced by an old, combined sewer system where stormwater and wastewater mix in a single pipe. That means that when the system is overwhelmed, the mix (CSOs) is carried into the harbor.

The city committed to spend \$187 million on its own by 2015 to address the problem. The money would fund such projects as vegetation on roofs to slow water from draining too quickly, porous pavement for parking lots to allow water to be absorbed as groundwater, tree pits and streetside swales to let water pool in underground areas, and rain barrels in some residential areas.

A senior attorney at the Natural Resources Defense Council, Larry Levine, said the plan is an attempt to incorporate green infrastructure for the first time into the city's federally required plan for coping with sewage overflows. It also would remove some so-called gray infrastructure projects, which references the tanks, pipes and pumps that make a urban water system go.

Asked if that is a positive trade-off, Levine said building such projects would bring the added benefit of more green space, which means you address sewage overflows as well as potentially cool the city and help cut the city's urban "heat island" effect.

"You're getting a lot of bang for your buck," he said. "There's nothing wrong with [replacing gray with green] so long as you're getting the same or better water quality results."

OIL AND GAS:

Pa. permits Cabot to stop Dimock water deliveries

Published: Wednesday, October 19, 2011

Pennsylvania environmental officials told Cabot Oil & Gas Corp. late yesterday that it could stop water deliveries to homeowners whose wells had been contaminated with methane.

Houston-based Cabot has delivered water to households in Dimock, Pa., since a January 2009 explosion tainted drinking water in the town. The gas company recently said the water is safe to drink and asked the state Department of Environmental Protection for approval to halt the water deliveries next month (*Greenwire* , Oct. 18).

DEP decided late yesterday it agreed with Cabot and issued a letter today announcing its determination.

Cabot is also seeking permission to resume drilling in an area of Dimock from which it has been banned since regulators concluded the company drilled faulty wells that allowed methane to escape into the water supply. Cabot denied responsibility for the contamination.

Dimock residents who say their wells are still contaminated with methane and other toxic chemicals have filed a lawsuit against Cabot.

Phillip Stalnaker, a Cabot vice president, said Monday in a letter to DEP that residents' water is safe for drinking and other uses and that any remaining methane in their wells is naturally occurring.

Methane is commonly found in Pennsylvania water, and although its toxicity is not known, the odorless, colorless gas can cause explosions and asphyxiation.

The company said it plans to inform affected homeowners by Nov. 1 that their water deliveries will cease by Nov. 30. Cabot has offered to pay to reconnect residents' water wells (Michael Rubinkam, *AP/Pittsburgh Post-Gazette* , Oct. 19). -- **PK**

ClimateWire -- Thu., October 20, 2011 -- [Read the full edition](#)

1. TRADE: Call for U.S. to slap duties on Chinese solar panels stirs industry debate

A request by a small coalition of U.S. solar panel makers yesterday that the U.S. Commerce Department slap duties on China's low-cost solar cells stirred tensions within the industry about who's to blame for tumbling stocks, job losses and bankruptcies. SolarWorld Industries America Inc., the U.S. subsidiary of German-based SolarWorld AG, filed a 3,000-page petition with the U.S. government on behalf of seven U.S. solar companies accusing the Chinese government of unfairly boosting its solar industry and driving U.S. competitors out of business.

2. ADVOCACY: Protesters include climate change in their concerns, but their political impact is uncertain

As a group of about 60 people crossed the street in front of Bryant Park and approached the barricaded Bank of America building in New York City, they broke into mock coughing fits and imitated dying in a protest against the health effects of coal mining. This act was among the many "Occupy Wall Street" protests that took place in the city last weekend, culminating in approximately 6,000 people gathered in Times Square to underscore growing economic inequality. The anti-coal protest was one of the first Occupy Wall Street actions focused specifically on environmental issues.

TODAY'S STORIES

- 3. MARKETS: Doubts about continuing growth of Europe's carbon trading**
- 4. EMISSIONS: Carbon project improves metric for greenhouse gases**
- 5. ENERGY EFFICIENCY: Painting roofs white may not mitigate effects of climate change -- study**
- 6. POLICY: Leaders and financial experts ponder the costs and benefits of economic sustainability**
- 7. EPA: Forest group fears 'policy bias' in scientific panel to assess GHGs of biomass**
- 8. NATIONS: U.K. overcomes first hurdle of the 'Green Deal'**
- 9. STATES: 10 states combine to streamline electric vehicle rules, investments and standards**
- 10. TRANSPORTATION: U.S. hobbyists develop upgrades for Nissan's Leaf**
- 11. CARBON CAPTURE: U.K. scraps its first carbon capture project**
- 12. WATER: Calif. vote could hike costs**
- 13. FOSSIL FUELS: Canada hopeful that E.U. won't label tar-sands oil as dirty**

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